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U.S. Department  
of Transportation  
Federal Aviation  
Administration

Office of Financial Services

OFFICE OF THE  
CHIEF COUNSEL  
RULES DOCKET

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800 Independence Ave., SW  
Washington, DC 20591

JUN - 1 2000  
Jean-Michel Bour  
Chairman, Aviation Assembly  
4101 Reservoir Road NW  
Washington, D.C. 20007

FAA-00-7018-26

Dear Mr. Bour:

This is a response to your letter of May 2, 2000, to Assistant Administrator David Traynham, regarding the FAA's plans to reestablish "overflight" fees for services provided to flights that transit US-controlled airspace without either taking off from, or landing in, the United States.

As indicated at our meeting on February 16, and reiterated in my letter of March 8, we plan to implement the fees through the publication of an Interim Final Rule (IFR) in the Federal Register. We expect publication to occur within the next few days. Once the IFR has been published, we envision a process very similar to that which would be followed in a routine rulemaking under the Administrative Procedures Act.

Your understanding is correct that we expect to make the fees effective on an interim basis approximately 60 days after publication. During those 60 days, and for an additional 60 days, the FAA will accept written comments on the fees. All comments received will be addressed before the fees are made final. We will also have a public meeting on the IFR approximately one month after publication and one month before the interim fees go into effect. We believe this should provide the Aviation Assembly, as well as other interested parties, adequate opportunity to present their views on the IFR.

A complete set of documents relating to the assignment of costs and the derivation of the fees will be placed in the docket of the IFR when the IFR is published. These documents will be available to the public at that time, and should answer most questions that you and others may have on the determination of costs and the derivation of fees.

We recognize your concern that the IFR process that we have been directed to follow does not provide for "prior and meaningful consultations" before the initial interim fees have been established. As we indicated at our February 16 meeting, we believe that the consultation the FAA is providing for through the IFR process, while different than what you would like, is consistent with international as well as domestic law. I can assure you that the FAA will thoroughly consider your comments concerning the IFR, as well as all others received, before proceeding later with a Final Rule.

You stated in your letter that the urgency and time pressures that existed at the time the overflight fees were previously established no longer exist, and that there is therefore no justification for sticking with the IFR approach. That is simply not the case. Every year since Congress initially authorized the establishment of overflight fees, Congressional appropriations to the FAA have assumed that FAA would be collecting the fees during that budget year. Also, Congress has not changed the law, despite multiple

opportunities to do so. As there is no evidence that Congressional intent has changed since 1996, we believe that the law requires FAA to proceed with the IFR.

I hope this better explains why we have had to proceed in the manner we have. At any time during this process, we will be happy to meet with you and other members of the Aviation Assembly to answer specific questions you may have on the fees or to hear a further presentation of your views.

Sincerely,

A handwritten signature in black ink, appearing to read "Donna McLean". The signature is fluid and cursive, with the first name "Donna" written in a larger, more prominent script than the last name "McLean".

Donna McLean  
Assistant Administrator for Financial  
Services/CFO